ESTATE OF JERRY ELMER COPPOCK

IBIA 90-58 Decided August 22, 1991

Appeal from an order denying petition for rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP SA 119 N 197.

Affirmed.

1. Indian Probate: Appeals: Generally

The appellant bears the burden of proving the error of the decision from which the appeal is taken.

APPEARANCES: Dan Allan, Esq., Anchorage, Alaska, for appellants; H. Conner Thomas, Esq., Nome, Alaska, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Raymond Coppock, Anthony Coppock, and Teresa Foster seek review of a January 24, 1990, order denying rehearing issued by Administrative Law Judge William E. Hammett in the estate of Jerry Elmer Coppock (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, a full-blood Eskimo, was born on May 25, 1905, and died testate on March 4, 1987, at Kotzebue, Alaska. He was survived by five children, as well as three children of a predeceased son, James Coppock, Sr. 1/ Decedent's surviving children are Lillian Lewis, appellee here; Ida Ballot; and the three appellants.

Decedent executed a will on April 14, 1986, in which he devised his "old house" in Kotzebue to appellee, his "NANA house" in Kotzebue to Ida Ballot, and the land underlying the two houses to appellee and Ballot as tenants in common. 2/ Further, decedent devised part of his Native allotment to Anthony Coppock and part to appellee. The will included several other specific devises, not relevant here; the residue of the estate was devised to appellee.

1/ Another child of James Coppock, Sr., had been adopted out when small.
2/ Both houses are located on Lot 22, Block 1, Tract 7, U.S. Survey No. 2083, Kotzebue Townsite Addition No. 1.

Judge Hammett held hearings to probate decedent's trust or restricted estate on June 18, 1987, and September 21, 1987, at Kotzebue. Appellants contested decedent's will at the September 21 hearing. Both appellants and appellee were represented by counsel at that hearing; they were also given an opportunity to, and did, file posthearing briefs. Appellants argued: (1) the will was not properly executed; (2) decedent lacked testamentary capacity; (3) decedent was subjected to undue influence by appellee; and (4) decedent and appellee were in a confidential relationship, giving rise to a presumption of undue influence and shifting the burden of proof to appellee.

In a long and carefully reasoned order, issued on October 11, 1989, Judge Hammett approved decedent's will. The Judge thoroughly discussed appellants' arguments and concluded: (1) the will was properly executed and was witnessed by at least two disinterested witnesses; (2) there was no confidential relationship between decedent and appellee when the will was executed; (3) appellants failed to establish that appellee unduly influenced decedent in the execution of his will; and (4) appellants failed to establish that decedent lacked testamentary capacity when he executed his will.

Appellants petitioned for rehearing and, on January 24, 1990, Judge Hammett denied their petition, stating that all issues raised in the petition had been addressed in his October 11, 1989, order.

Appellants' notice of appeal to the Board was received on March 21, 1990. 3/ Although appellants sought and were granted an extension of time in which to file their opening brief, they did not file a brief. Appellee also did not file a brief.

Discussion and Conclusions

Appellants' notice of appeal contains an extensive list of alleged errors in Judge Hammett's order but does not support the allegations with any arguments. As noted, appellants did not file a brief. It is possible that they decided to rely on their posthearing brief before Judge Hammett, although they did not so advise the Board.

[1] The burden was on appellants to prove error in Judge Hammett's decision. E.g., Estate of Warren Lewis Lincoln, 19 IBIA 118 (1990). Appellants' bare recitation of alleged errors in the decision is insufficient to meet that burden.

Even assuming appellants intended to reiterate the arguments made in their posthearing brief, the Board is not persuaded that Judge Hammett's decision should be disturbed. The Board has carefully reviewed the

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3/ Another filing, discussed below, might have been intended as a notice of appeal on behalf of Ruth Coppock, widow of decedent's predeceased son, James Coppock, Sr.

October 11, 1989, order approving will. It has also thoroughly reviewed the probate record, including the parties' posthearing briefs. It finds the record entirely supportive of Judge Hammett's decision.

As noted above, the Board received a filing made on behalf of Ruth Coppock, which may have been intended as a notice of appeal. This was a July 10, 1990, letter from Larry Illman to Judge Hammett, which the judge forwarded to the Board. The letter indicated that Ruth Coppock wished to challenge the inventory of the estate on the grounds that one land parcel included in the estate, i.e., Lot 21, Block 1, Tract 7, U.S. Survey No. 2083, Kotzebue Townsite Addition No. 1, had been previously conveyed to her deceased husband and herself.

Larry Illman's letter did not demonstrate that he was a qualified representative under 43 CFR 1.3. Accordingly, by order dated July 17, 1990, the Board indicated that Illman should clarify his status and that, if he could not qualify under the Department's rules of practice, Ruth could adopt the letter as her own by so informing the Board and by sending copies of the letter to the other parties to the appeal. On September 28, 1990, the Board received a letter from Ruth, indicating that she wanted to challenge decedent's will because it did not devise the land under her house to her. 4/ Enclosed with that letter was a copy of Illman's July 10 letter. There was no indication that Ruth had sent copies of either letter to the other parties, as she was specifically required to do, both by the notice of docketing in this appeal and by the Board's July 17, 1990, order.

4/ Presumably, the portions of Judge Hammett's order objected to by Ruth were those concerning Townsite Lots 21 and 22. A Native Restricted Trustee Deed included in the record shows that these lots were conveyed to decedent in restricted fee status on May 8, 1968. The record also includes a map which shows, in addition to decedent's "old house" and "NANA house"on Lot 22, a third house located in part on Lot 21 and in part on Lot 22; the house is identified on the map as owned by James and Ruth Coppock.

Judge Hammett held that Lot 22 passed by specific devise to appellee and Ida Ballot as tenants in common and that Lot 21 passed to appellee as residuary devisee. He stated:

"It seems most inequitable to determine that by succeeding to ownership of Lot 21, [appellee] would also succeed to the house situated partially on Lot 21 under the precepts of general property law, to-wit, that fixtures affixed to real property, absent an intent to treat them as personalty, become a part of the underlying fee. Therefore, Ruth Coppock, if she is the present owner of such house should be permitted to relocate the house on other land or, if the house cannot be removed without causing extensive damage to the land or the structure, or great expense to Ruth Coppock, or if she does not possess land to which the house can be removed, the Bureau of Indian Affairs should work with [appellee] and Ruth Coppock to reach a fair and just solution to this problem. Since the house is reported to encroach on Lot 22, Ida Ballot should also be a party to any negotiations with the Bureau."
(Oct. 11, 1989, Order at 10-11).

Ruth's attempted filings do not appear to be intended as a response to appellants' appeal. Rather, they clearly appear to challenge Judge Hammett's order, but on entirely different grounds than those put forth by appellants. In other words, it appears that Ruth intended to file her own notice of appeal. However, if construed as a notice of appeal, the July 10 letter is untimely and would have to be dismissed for that reason. Even if Ruth's filings are construed as the responsive pleadings of an interested party, they cannot be considered because Ruth failed to serve them on the other parties despite being explicitly advised to do so.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's January 24, 1990, order denying rehearing is affirmed.

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Anita Vogt
Administrative Judge

I concur:

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Kathryn A. Lynn
Chief Administrative Judge